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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/025,896	02/18/1998	BILLIE JEAN LONGSTRETH		1132

7590 01/29/2003

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EXAMINER

GOODMAN, CHARLES

ART UNIT

PAPER NUMBER

3724

DATE MAILED: 01/29/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)
	09/025,896	LONGSTRETH, BILLIE JEAN
	Examiner	Art Unit
	Charles Goodman	3724

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 14 November 2002.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 7 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 7 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) The proposed drawing correction filed on _____ is: a) approved b) disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) All b) Some * c) None of:
1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. _____.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) The translation of the foreign language provisional application has been received.
- 15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- | | |
|---|--|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____ . |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____. . | 6) <input type="checkbox"/> Other: _____ . |

DETAILED ACTION

1. The Amendment filed on November 14, 2002 has been entered.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claim 7 is rejected under 35 U.S.C. 102(b) as being anticipated by Seib et al.

Seib et al discloses a stoma flange cutter comprising all the elements claimed including, *inter alia*, a circular top (e.g. 38, 40); a circular bottom (e.g. at 42); a cylindrical body wall (36); a permanently affixed cap (18); cutting edge (42); and a removable protective cover (20).

Regarding the work being “cabbage”, this has not been given significant patentable weight, since it has been held that a recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus satisfying the claimed structural limitations. *Ex parte Masham*, 2 USPQ2d 1647 (1987).

Regarding the manner in which the cutting and chopping means is formed, this has not been given significant patentable weight, since in an apparatus invention, how a structure is formed is not germane to the structure itself.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Rothje in view of Snyder.

Rothje discloses the invention substantially as claimed including, *inter alia*, a cylindrical body (1); a closed top and handgrip (e.g. at 6); an open bottom (at 2 in the Figures); and a cutting edge (2). See whole patent. However, Rothje lacks a cover for the cutting edge. In that regard, Snyder teaches a cylindrical shaped cutter having a protective cover (40) for the inherent purpose of protecting the user from potential harm via the cutting edge (30). Figs. 1-8, c. 2, ll. 35-38. Thus, it would have been obvious to the ordinary artisan at the time of the instant invention to provide the device of Rothje with the cover as taught by Snyder in order to prevent potential harm to the user from the cutting edge.

6. Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Rothje in view of Seib et al.

Rothje discloses the invention substantially as claimed including, *inter alia*, a cylindrical body (1); a closed top and handgrip (e.g. at 6); an open bottom (at 2 in the Figures); and a cutting edge (2). See whole patent. However, Rothje lacks a cover for the cutting edge. In that regard, Seib et al teaches a cutter having a protective cover (20)

for the inherent purpose of protecting the user from potential harm via the cutting edge (42) as well as for storage purposes. See c. 3, ll. 4-18. Thus, it would have been obvious to the ordinary artisan at the time of the instant invention to provide the device of Rothje with the cover as taught by Seib et al in order to prevent potential harm to the user from the cutting edge and to facilitate storage of the device.

7. Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Bell in view of Collins and Snyder.

Bell discloses the invention substantially as claimed including, *inter alia*, a cylindrical body (1); a closed top and handgrip (e.g. at 4); and an open bottom (below 5 in Fig. 3). See whole patent. However, it appears that Bell lacks (A) a sharpened cutting edge and (B) a cover.

Regarding (A), although it appears that Bell lacks a sharpened edge, Collins teaches a kitchen utensil having a cylindrical body (10) and a sharpened cutting edge (14) which allows for an easier operation of cutting slicing, chopping, mixing and blending of foods. Figs. 1-3, c. 1, ll. 7-15 and c. 2, ll. 38-41. Thus, it would have been obvious to the ordinary artisan at the time of the instant invention to provide the device of Bell with the sharpened cutting edge as taught by Collins in order to facilitate easier chopping of material.

Regarding (B), the modified device of Bell lacks a cover for the cutting edge. However, Snyder teaches a cylindrical shaped cutter having a protective cover (40) for the inherent purpose of protecting the user from potential via the cutting edge (30). Figs. 1-8, c. 2, ll. 35-38. Thus, it would have been obvious to the ordinary artisan at the

time of the instant invention to provide the modified device of Bell with the cover as taught by Snyder in order to prevent potential harm to the user from the cutting edge.

8. Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Bell in view of Collins and Seib et al.

Bell discloses the invention substantially as claimed including, *inter alia*, a cylindrical body (1); a closed top and handgrip (e.g. at 4); and an open bottom (below 5 in Fig. 3). See whole patent. However, it appears that Bell lacks (A) a sharpened cutting edge and (B) a cover.

Regarding (A), although it appears that Bell lacks a sharpened edge, Collins teaches a kitchen utensil having a cylindrical body (10) and a sharpened cutting edge (14) which allows for an easier operation of cutting slicing, chopping, mixing and blending of foods. Figs. 1-3, c. 1, ll. 7-15 and c. 2, ll. 38-41. Thus, it would have been obvious to the ordinary artisan at the time of the instant invention to provide the device of Bell with the sharpened cutting edge as taught by Collins in order to facilitate easier chopping of material.

Regarding (B), the modified device of Bell lacks a cover for the cutting edge. However, Seib et al teaches a cutter having a protective cover (20) for the inherent purpose of protecting the user from potential harm via the cutting edge (42) as well as for storage purposes. See c. 3, ll. 4-18. Thus, it would have been obvious to the ordinary artisan at the time of the instant invention to provide the modified device of Bell with the cover as taught by Seib et al in order to prevent potential harm to the user from the cutting edge and to facilitate storage of the device.

Response to Arguments

9. Applicant's arguments filed July 1, 2002 have been fully considered but they are not persuasive.

In response to Applicant's basic argument that Seib et al does not anticipate the claimed invention because Seib et al does not basically have the same hollow body as Applicant's invention, this argument is respectfully traversed. Simply put, Seid et al includes a hollow body defined by the cylinder shaped cutter wall (36). Claim 7 is not so limiting that the device cannot have additional features within the hollow wall.

In response to Applicant's argument against the other references, this argument is respectfully traversed. In terms of patent prosecution, it is irrelevant whether the prior art references have different designs or are more complicated than that of Applicant's invention to the extent that claim 7 is broad enough to encompass other designs.¹ Moreover, it is irrelevant whether other devices are more complicated or has more features than that of Applicant's invention since claim is also broad enough to encompass additional features to those claimed. In other words, if the prior art shows each and every feature claimed with the exception of whatever additional features that the prior art may disclose, the prior art still anticipates or reads on the claimed features.

Regarding the "filed or rubbed down" method of forming the cutting edge, this is not given any patentable weight, since the method of forming a part is not germane to the patentability of apparatus feature.

¹ Note e.g. that nothing in the claim precludes the edges being corrugated. As long as the cutting edge is "smooth, thin, and sharp", the prior reads on this feature.

Conclusion

10. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Charles Goodman whose telephone number is (703) 308-0501. The examiner can normally be reached on Monday-Thursday between 7:30 AM to 6:00 PM EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Allan Shoap, can be reached on (703) 308-1082.

In lieu of mailing, it is encouraged that all formal responses be faxed to 703-872-9302. Any inquiry of a general nature or relating to the status of this application should be directed to the receptionist whose telephone number is 703-308-1148.


Charles Goodman
Primary Examiner
AU 3724

cg 
January 27, 2003

CHARLES GOODMAN
PRIMARY EXAMINER